

SPECIAL CIVIL APPLICATION No 6897 of 1990

Hon'ble MR.JUSTICE N.N.MATHUR

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5. Whether it is to be circulated to the Civil Judge?

2 to 5 No

JAMNADAS K. PATEL

Versus

STATE OF GUJARAT

Appearance:

MR DF AMIN for Petitioner

Ms. Harsha Devani, AGP for Respondent No. 1

SERVED for Respondent No. 2

MR KETAN A DAVE for Respondent No. 3

CORAM : MR.JUSTICE N.N.MATHUR

Date of decision: 08/08/96

ORAL JUDGEMENT

The say of the petitioner in this Special Civil Application under Article 226 of the Constitution of India is that he participated in the 1942 Quit India Movement. He was tried for offence under section 56(1)

and (4) of the Defence of India Rules and was convicted for the said offence by judgment dated 11.9.1942 passed by the Addl. City Magistrate, First Class, Poona. He was sentenced to undergo R.I. for three months and a fine of Rs.100/- .

2. The Central Government issued a circular dated 12.12.1972 laying down the criteria for pension and distribution of Tamrapatra to the freedom fighters. One of the criteria for the distribution of Tamrapatra is that the persons must have suffered imprisonment in the mainland jails for a period of not less than six months before independence. The period of under-trials spent in jail are also reckoned for the total period of imprisonment. The petitioner has produced a certificate of the Superintendent, Yaravda Central Prison, which indicates that the petitioner was convicted on 11.9.1942 and he was released on 10.2.1943. The petitioner has also filed affidavit of one Shri Kishanji Gopal Patwardhan. He says that he participated in freedom movement of 1942, and he is receiving pension under the Scheme of 1980 of the Central Government. He has stated that he knows the petitioner-Jamnadas K Patel since August 1942. They had taken out a procession on 16th August, 1942 to mourn the death of late Shri Mahadeobhai Desai as such they were arrested. They were taken to Yaravda Central Prison. Both were convicted to 3 months and to pay a fine of Rs.100/-. He was released on undergoing of sentence of 3 months as his brother paid Rs.100/-. However, the petitioner was released on 10.2.1942, as he did not pay the fine. Thus he remained in jail for a period of 5 days short of 6 months.

2. Considering the facts of the case and the fact that the petitioner remained in jail for 5 months and 25 days and he has not asked for pension. it will be just and proper to honour the petitioner who participated in the freedom movement by awarding Tamrapatra. The requirement of 6 months imprisonment is under a scheme which is not statutory. The scheme is more in the nature of guidelines. Little relaxation can be made in the rule in a given case, if facts so demands to achieve the object of the scheme. Ordinarily, I would have remitted the matter to appropriate authority to consider relaxation in the rules, but looking to the fact that the petitioner applied under the scheme years back and further looking to his old age, the requirement of 6 months is relaxed to accommodate the short period of 6 days. The High Court will have power under Article 226 of the Constitution of India to relax the provision if facts of the case so warrant, to secure ends of justice.

The Court will not feel short of power to do justice with the people who fought for the independence of the Country.

3. In view of the aforesaid, this Special Civil Application is allowed and the respondents are directed to honour the petitioner by awarding Tamrapatra as mark of recognition of his contribution as a freedom fighter. This order shall be complied with within a period of 2 months from today.

Rule made absolute to the aforesaid extent. There shall be no order as to costs.

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